

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL L. MONTALVO,

Defendant.

CR. NO. 2:89-62 WBS GGH
Court of Appeals No. 13-17469
ORDER

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On October 16, 2013, the court denied defendant Michael L. Montalvo's motion for relief from final judgment pursuant to Federal Rule of Civil Procedure 60(b). (Docket No. 1098.) Montalvo filed a notice of appeal from that ruling on November 12, 2013, (Docket No. 1099), and moved for a certificate of appealability ("COA"), which the court denied on January 13, 2014, (Docket No. 1105).

Montalvo, now proceeding pro se, again moves for relief under Rule 60(b), (Docket No. 1107), and seeks an order from this court indicating that it will entertain or grant the new Rule

1 60(b) motion so that Montalvo may seek remand from the Ninth
2 Circuit, (Docket No. 1106). See generally Williams v. Woodford,
3 384 F.3d 567, 586 (9th Cir. 2004) ("To seek Rule 60(b) relief
4 during the pendency of an appeal, the proper procedure is to ask
5 the district court whether it wishes to entertain the motion, or
6 to grant it, and then move [the Ninth Circuit], if appropriate,
7 for remand of the case.").

8 If a party moves for relief that the court lacks
9 authority to grant because of a pending appeal, Federal Rule of
10 Civil Procedure 62.1 allows the court to: "(1) defer considering
11 the motion; (2) deny the motion; or (3) state either that it
12 would grant the motion if the court of appeals remands for that
13 purpose or that the motion raises a substantial issue." Fed. R.
14 Civ. P. 62.1; see also Williams, 384 F.3d at 586; Knight v.
15 Trimble, No. C 10-00276 SBA (pr), 2013 WL 6140743, at *2 (N.D.
16 Cal. Nov. 21, 2013) (stating that Rule 62.1 codifies procedure
17 set forth in Williams).

18 The court does not wish to entertain or grant
19 Montalvo's new Rule 60(b) motion. The purportedly new motion
20 does not raise a "substantial issue," Fed. R. Civ. P. 62.1, but
21 instead re-hashes the same arguments the court rejected in
22 denying Montalvo's COA and his earlier Rule 60(b) motion, simply
23 without the ineffective assistance of counsel gloss he asserted
24 before.

25 IT IS THEREFORE ORDERED THAT Montalvo's request that
26 the court entertain or grant his Rule 60(b) motion, (Docket No.
27 1106), as well as the Rule 60(b) motion itself, (Docket No. 1107)
28 be, and the same hereby are, DENIED. The Clerk of this court is

1 directed to send a copy of this Order to the Clerk of the United
2 States Court of Appeals for the Ninth Circuit.

3 Dated: June 4, 2014

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5 WILLIAM B. SHUBB
6 UNITED STATES DISTRICT JUDGE
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